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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WILLIAM J. HASER,

Petitioner,

vs.

JOAN H. WISKOWSKI, Director of Division of Motor Vehicles, State of New Jersey,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY SAT BELOW: HON. PAUL R. KRAMER, J.S.C.

[redacted] PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where an individual has allegedly caused a fatal accident, and the Director of the Division of Motor Vehicles seeks to administratively suspend his driver's license, but no action is taken until thirty months after the incident, has the individual received due process?

Where an individual has voluntarily refrained from driving for one year after being involved in a fatal accident, and the Director suspends his driving privilege thirty months later after he is gainfully employed, should not the period of voluntary suspension be used as a mitigating factor in determining the period of suspension?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

William J. Haser, the petitioner, herein, prays that a writ of certiorari issue to review the judgment of the New Jersey Supreme Court entered in the above-entitled matter on February 9, 1982.

OPINIONS BELOW

The judgment of the New Jersey Supreme Court is printed in Appendix A hereto, *infra*, page A1. The decision of the New Jersey Division of Motor Vehicles is printed in Appendix C hereto, *infra* page A3.

JURISDICTION

The judgment of the New Jersey Supreme Court (Appendix A hereto, *infra*, page A1) was entered on February 9, 1982. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1257, section 3.

QUESTIONS PRESENTED

Where an individual has allegedly caused a fatal accident, and the Director of the Division of Motor Vehicles seeks to administratively suspend his driver's license, but no action is taken until thirty months after the incident, has the individual received due process?

Where an individual has voluntarily refrained from driving for one year after being involved in a fatal accident, and the Director suspends his driving privilege thirty months later after he is gainfully employed, should not the period of voluntary suspension be used as a mitigating factor in determining the period of suspension?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves *N.J.S.A.* 39:5-30 which is printed in Appendix B hereto, *infra*, page A2.

STATEMENT OF THE CASE

The petitioner was driving an automobile on November 14, 1978. One of the passengers was killed when the petitioner lost control of the automobile and struck a tree. Petitioner was convicted of reckless driving in the Municipal Court. The New Jersey Division of Motor Vehicles subsequently acted to suspend petitioner's driver's license administratively. The date of the proposed suspension was April 27, 1979, and the request for hearing was filed by counsel which resulted in an informal conference on August 1, 1979.

The petitioner was so traumatized by the accident that he voluntarily refrained from operating a motor vehicle for a one year period following the accident. The petitioner also voluntarily attended and successfully completed a good driver program.

Nothing further was done by the Division of Motor Vehicles until March 6, 1981, which resulted in a hearing held on April 24, 1981. The formal administrative trial was not held until almost thirty months after the incident.

Counsel moved to dismiss on the ground of administrative delay, which motion was denied. (Appendix C,

hereto *infra* page A4) Trial ensued and the Administrative Law Judge recommended a one-year license suspension. The Director of Motor Vehicles subsequently forwarded a proposed Notice of Suspension of the petitioner's driving privileges. A temporary stay of the suspension has been granted.

The petitioner appealed the suspension to the New Jersey Appellate Division claiming that the state's delay in prosecuting the proposed suspension violated due process. Petitioner's appeal was denied. The petitioner then filed a Petition for Certification in the New Jersey Supreme Court again arguing that he had been denied due process by the state's delay. This Petition was denied.

REASONS FOR GRANTING WRIT

This Court has declared that whether a dirver's license is declared to be a "right" or a "privilege," the State may not take away a driver's license without granting procedural due process. Although the leading case of *Bell v. Burson*, 402 U.S. 535, 29 L.Ed.2d 90, 91 S. Ct. 1586 (1971) dealt with the question of whether a state could suspend the petitioner's license before a hearing was held, the decision made mention of several general considerations relevant to this case. The Court noted:

> Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 23 L.Ed.2d 349, 89 S. Ct. 1820 (1969); *Goldberg v. Kelly*, 397 U.S. 254, 25 L.Ed.2d 287, 90 S. Ct. 1011 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." 402 U.S. at 539

As to the nature of the procedural due process which is required before a driver's license may be suspended or revoked, the question is whether the procedure in question was "appropriate to the nature of the case," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 94 L.Ed 865, 872, 70 S. Ct. 6542 (1950). However, this Court made it clear in *Bell, supra*, that it is the substance and not the form which determines whether

the minimum constitutional requirements have been met.

The determination necessarily rests upon whether the hearing which was given was "appropriate" as required by *Mullane, supra*, as well as "meaningful," as required by *Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L.Ed.2d 62, 85 S. Ct. 1187 (1965).

In *Town Court Nursing Ctr., Inc. v. Beal*, 586 F.2d 280 (3rd Cir. 1978) the Court agreed that due process is required before a party can be deprived of either a "right" or a "government-granted privilege." The Court further noted that there can be no distinction between these so-called rights and privileges since many individuals are dependent upon government privileges for their very existence. 586 F.2d at 285.

In the present case, the concern is with the timing of the suspension hearing, in that it was not held until some thirty months after the accident. This delay prejudiced the petitioner in several ways.

First, the petitioner had voluntarily refrained from driving for a period of one year following the accident. If the State had moved promptly to hold the hearing, the imposed penalty of suspension of one year would have coincided with the petitioner's voluntary suspension of driving. As it happened, because of the State's delay, the petitioner's voluntary suspension of driving was not taken into consideration by the Administrative Law Judge. The petitioner was doubly penalized in that while proceedings involving license revocations are not criminal trials, the New Jersey Supreme Court has recognized that the loss of driving privileges affects people in a serious, substantial manner, and that such proceedings must meet those incidents of fairness underlying due process, *In re Arndt*, 67 N.J. 432, 436 (1975); *David v. Strelecki*, 51 N.J. 563, 566 (1962).

An amendment to *N.J.S.A.* 39:5-30, although it became effective subsequent to the date of the accident *sub judice* but prior to the hearing, imposes strict time limits within which the suspension proceedings must be heard. (Appendix B) The Administrative Law Judge made findings of fact that the delays herein exceeded those time limits, as well as being similar to those in the *Arndt* matter. In *Arndt* the New Jersey Supreme Court considered the problem of administrative delays although specifically concerned with the prosecution of those drivers who refuse to submit to a breath chemical test after having been arrested on suspicion of driving while under the influence of intoxicating liquors. The New Jersey Supreme Court held in that case that a delay of two years and eight months between the arrest and the order of suspension justified reversing the order of suspension because the Division failed to institute the suspension proceedings within a reasonable time and the proceedings as a whole were conducted with "seriously unfair disregard of appellant's rights."

These considerations are equally applicable to other driving offenses, however. The New Jersey Supreme Court in *Arndt* noted:

> We address the matter of the administrative delays in prosecution of these proceedings. N.J.S.A. 39:4:50.4 provides that the arresting officer shall deliver to the Director his sworn report of the driver's refusal to submit to the test and that "[*u*]*pon receipt of such a report,*" if the Director finds the report to be in order, "he shall . . . suspend the person's license . . . unless such person, within 20 days of the date of such notice . . ." requests a hearing (emphasis added).

The Court then went on to point out the purpose underlying this directive from the legislature:

> It is clear from this language that the Legislature contemplated that the Director should move promptly to process the violation after notification by the police. This direction is apparently designed primarily to serve the statutory policy of protecting the traveling public by removing the offending driver from the highways with reasonable dispatch. See *Atkinson v. Parsekian*, 37 N.J. 143, 155 (1962); *David v. Strelecki*, 51 N.J. 563, 566 (1968).

N.J.S.A. 39:5-30 directs that prompt administrative procedures be instituted whenever a matter is presented to the director involving an alleged violation of *R.S.* 39:4-129 wherein the death of another has occurred as in the present case. This statute provides that a preliminary hearing shall be held on the matter within 15 days of the date that the summons was issued or the arrest made and further that a preliminary suspension shall issue if grounds exist immediately after the hearing. Whether or not a finding of probable cause was made, a hearing shall be held within forty-five days of the date the summons was issued or arrest was made.

In the present case the Administrative Law Judge denied the petitioner's motion to dismiss on the ground that the administrative delay in the case was excessive and fundamentally unfair. The Judge noted that since the enactment of the amendment to *N.J.S.A.* 39:5-30, which was effective on February 27, 1980, fatal accident cases have been subject to strict statutory time frames (Appendix C, page A5). Counsel for the Director argued that there was a shortage of attorneys and a backlog of old cases. Although the Judge found that the total time period involved was within a few weeks of the delay disapproved in *Arndt*, six weeks were attributable to the petitioner's own adjournment request and the Judge found "no dereliction of administrative duty similar to

that highlighted in the *Arndt* case (Appendix C, page A7).

It is clear that the objectives intended by the Legislature by the enactment of *N.J.S.A.* 39:5-30 were not met by the proceedings in this case. There was an unconscionable delay which greatly prejudiced the petitioner. Not only did the delayed suspension of his license occur after he had already voluntarily refrained from driving for one year but the delayed suspension came after he had obtained employment and needed the use of his car.

If the purpose of the prompt handling of certain traffic violations is to protect the driving public then how can the Director possibly justify suspending a license some thirty months after the particular offense? There is no rational relation between the manner in which the petitioner is driving at the present time and the suspension of his license. Where there is no rational relation between an agency's action and the avowed purpose for that action, the agency's action becomes arbitrary and capricious. *Roth v. Board of Trustees*, 49 N.J. Super. 309 (App. Div. 1958).

CONCLUSION

For the reasons stated above, the decision of the New Jersey Supreme Court which denied petitioner's application to review the decision of the Director of Motor Vehicles, raises a question of general importance which should be reviewed by this Court. We believe it is in the public interest that this decision be reviewed so that a prompt authoritative determination may be made on this question.

Respectfully submitted,

Robert B. Cherry,
Attorney for Petitioner

By: /s/ Edward R. Schutzer
EDWARD R. SCHUTZER